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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SUSAN HOY, as Guardian Ad Litem for J.M.
and I.M., minors,

Plaintiffs,

vs,

ANDREA HERNANDEZ; WALDO
HERNANDEZ; LISA BROCHU; KIM
KALLAS; LISA RUIZ-LEE; PAULA
HAMMACK; DOE Individuals I-X; ROE
CLARK COUNTY DEPARTMENT OF
FAMILY SERVICES EMPLOYEES XI-XX,
individually and in their official capacities;
COUNTY OF CLARK, a political subdivision of
the State of Nevada; and ZOE CORPORATIONS
XXI-XXX,

Defendants,

LISA BROCHU, an individual,

Cross-Claimant,

CASE No.: 2:20-cv-00103-GMN-VCF

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL PLAINTIFF'S
FRCP 35 EXAMINATION IN
HENDERSON, NEVADA**

1 vs,

2 ANDREA HERNANDEZ, an individual;
3 WALDO HERNANDEZ, an individual; MOES
4 1-10, inclusive; and MOE CORPORATIONS 1-
5 10, inclusive,

6 Cross-Defendants,

7 ANDREA HERNANDEZ, an individual;
8 WALDO HERNANDEZ, an individual,

9 Cross-Claimants,

10 vs,

11 LISA BROCHU, an individual,

12 Cross-Defendant,

13 Defendant LISA BROCHU ("Brochu"), along with COUNTY OF CLARK, KIM KALLAS,
14 LISA RUIZ-LEE AND PAULA HAMMACK (collectively, "Defendants") filed their Motion to
15 Compel Plaintiff J.M.'s Physical Examination pursuant to FRCP 35 to be conducted in Henderson,
16 Nevada on January 19, 2021 [ECF No. 47] ("Motion to Compel"). Plaintiffs filed their response
17 to the Motion to Compel on February 2, 2021 [ECF No. 47], and Defendants filed their reply in
18 support on February 9, 2021 [ECF No. 49].

19 A hearing was held before this Court regarding the Motion to Compel on March 12, 2021 by
20 video conference, with counsel for all parties attending. The Court hereby orders as follows:

21 IT IS HEREBY ORDERED that the Motion to Compel is hereby GRANTED.

22 The Court finds that an FRCP 35 examination of JM by a medical doctor specializing in plastic
23 surgery is appropriate given JM's damage claims and the expert report disclosed by Plaintiff's
24 expert Lloyd Krieger, MD.

25 With regard to the location of the FRCP 35 examination, the Court finds that, while Plaintiffs
26 currently reside in California, the general rule in the District of Nevada is, "that plaintiffs should
27 submit to the examination in the forum in which they chose to bring suit." *Mansel v. Celebrity*
28 *Coaches of Am., Inc.*, No. 2:13-cv-01497-JAD-NJK, 2013 U.S. Dist. LEXIS 178805, at *3-9 (D.
Nev. Dec. 20, 2013). While this rule can be overcome, the burden is on the plaintiff to show that

1 he cannot do so. *Id.* “A Plaintiff must ‘show that traveling to the examination poses
2 undue burden or hardship.’” *Cameron v. Gutierrez*, No. 19-841 GJF/KK, 2020 U.S. Dist. LEXIS
3 162868, at *7-8 (D.N.M. Sep. 4, 2020) (emphasis added). Plaintiff raised issues regarding
4 conflicts with the minor plaintiffs’ parents work, as well as concerns regarding COVID-19.
5 However, “That burden is not met through general assertions of an inability to travel, but rather
6 requires specific evidence demonstrating an inability to travel.” *Mansel* at 3-9.

7 Plaintiff has not met his burden regarding demonstrating undue burden or hardship, and
8 therefore the general rule shall be enforced.

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1 IT IS FURTHER ORDERED that Plaintiff JM shall present for a FRCP 35 examination with
2 Nittin Engineer, MD at his office in Henderson, Nevada on April 23, 2020 at 3:00 PM.

4 IT IS SO ORDERED:

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6 
UNITED STATES MAGISTRATE JUDGE

7 3-24-2021

8 DATED: _____

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10 Respectfully submitted by:

11 DATED this 23 day of March, 2021.

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14 **WILEY PETERSEN**

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1 Approved as to Form and Content:

2 DATED this 23 day of March, 2021.

3
4 /s/ Cara Xidis

5 Cara Xidis, Esq.

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10 Attorneys for the Plaintiffs

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